

**TRANSCRIPT OF RECORD.**

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**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1920.**

**No. 394.**

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**H. SNOWDEN MARSHALL, AS RECEIVER OF ALL PACK-  
AGE GROCERY STORES COMPANY, PETITIONER,**

**vs.**

**THE PEOPLE OF THE STATE OF NEW YORK.**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT.**

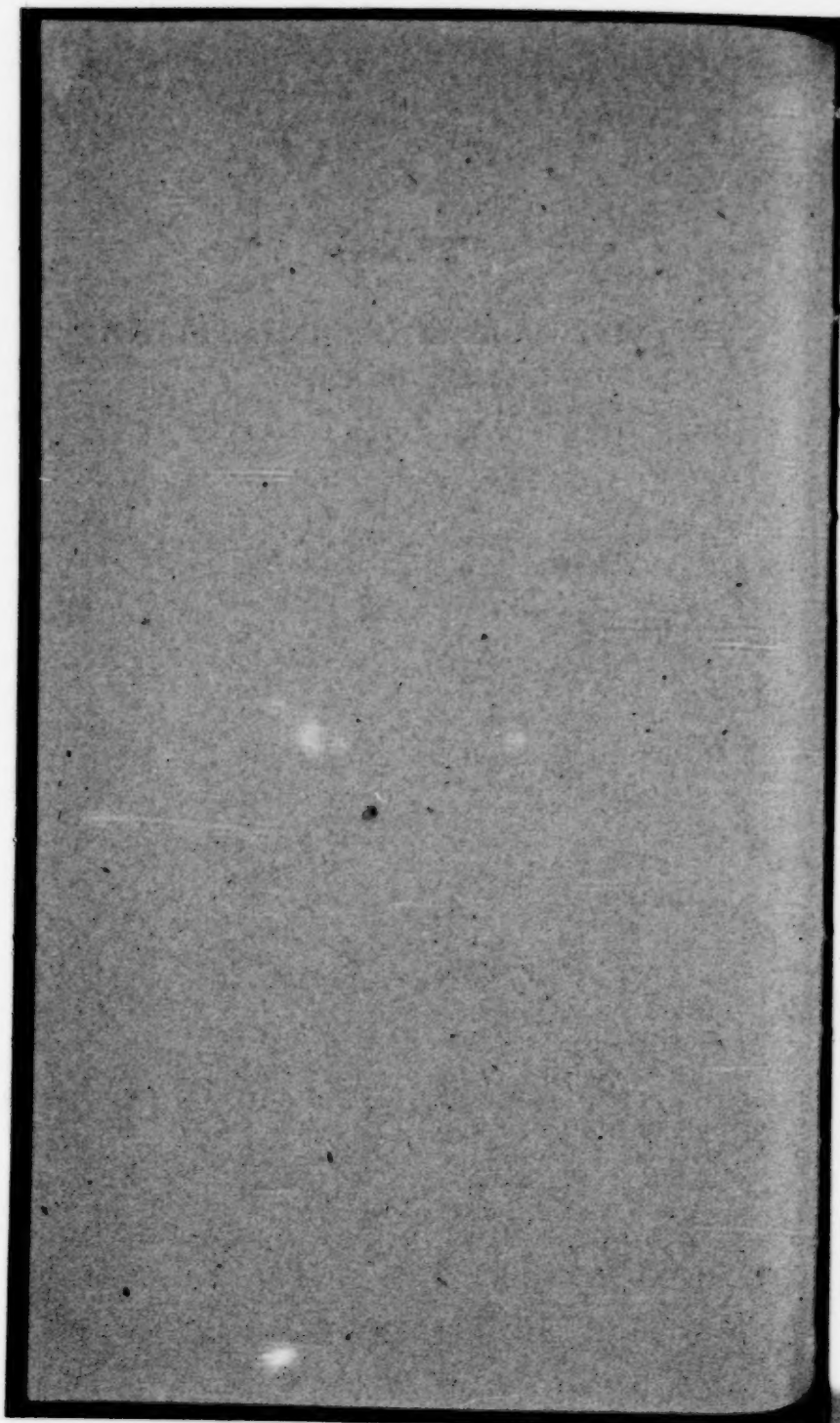
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**PETITION FOR CERTIORARI FILED MARCH 27, 1921.**

**CERTIORARI AND RETURN FILED JUNE 1, 1921.**

**(37,591)**



(27,591)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 294.

H. SNOWDEN MARSHALL, AS RECEIVER OF ALL PACKAGE GROCERY STORES COMPANY, PETITIONER,

*vs.*

THE PEOPLE OF THE STATE OF NEW YORK.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals, Second Circuit.

WILLIAM H. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

In the Matter of the Petition of THE PEOPLE OF THE STATE OF NEW YORK, Petitioners.

*Record on Appeal.*

Charles D. Newton, Attorney-General of the State of New York,  
Solicitor for Petitioners, Capitol, Albany, New York.

Gilbert & Gilbert, Solicitors for Respondent, No. 43 Exchange  
Place, Borough of Manhattan, New York City.

[Stamped:] United States Circuit Court of Appeals, Second Cir-  
cuit. Filed Jul. 1, 1919. William Parkin, Clerk.

1 United States District Court, Southern District of New York.

WILLIAM H. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

In the Matter of the Petition of THE PEOPLE OF THE STATE OF NEW YORK, Petitioners.

*Citation.*

Greeting:

Whereas the People of the State of New York have lately appealed to the United States Circuit Court of Appeals for the Second Circuit from a decree or order rendered in the United States District Court for the Southern District of New York, dated May 3d, 1919 and entered in the office of the Clerk of said Court on the 7th day of May, 1919, which said order resettled and amended the order made and entered on the 12th day of April, 1919, and which said decree or order adjudicates respecting the claims of the People of the State of New York for taxes and from which order an appeal is taken from that portion thereof ordering that the claims of the People of the State of New York for \$977.86 and \$22,517.86, respectively, for license fees for the purpose of exercising corporate franchise and carrying on business within the State of New York be allowed only as general claims against the estate of the defendant company in the hands of the receiver thereof; you are hereby cited to appear before the United States Circuit Court of Appeals for

the Second Circuit at the Post Office Building in the Borough of Manhattan, City of New York on the 31st day of May, 1919, to do and receive what may appertain to justice in the premises and to show cause why said order or decree of the United States District Court for the Southern District of New York in said appeal mentioned should not be reversed, modified or corrected in allowing said claims as preferred claims against the estate of the defendant in the hands of the receiver thereof, and directing the receiver to forthwith pay to the People of the State of New York the said sums of \$977.86 and \$22,517.86 in satisfaction thereof.

Given under my hand at the Borough of Manhattan in the City of New York, in the Southern District of New York, Second Circuit, this 8th day of May in the year of our Lord, One thousand, nine hundred and nineteen, and of the Independence of the United States, One Hundred and Forty-third.

J. M. MAYER,

*United States District Court Judge  
for the Southern District of New York.*

*Admission of Service of Citation.*

Service of a copy of within citation is admitted this 10th day of May, 1919.

GILBERT & GILBERT,

*Solicitors for Defendant.*

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*Stipulation.*

United States District Court, Southern District of New York.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

In the Matter of the Petition of THE PEOPLE OF THE STATE OF NEW YORK, Petitioners.

It is hereby stipulated and agreed that the giving of security by the appellant, The People of the State of New York, pursuant to the provisions of Section 1000 of the Revised Statutes of the United States on an appeal from the order made and dated the 3d day of May, 1919 and duly entered in the office of the Clerk of this Court on the 7th day of May, 1919, which said order resettled and amended an order made and entered in the office of the Clerk of this Court on the 12th day of April, 1919 in this cause be and the same hereby is waived, and that the citation herein may be signed by a Justice of this Court without the requirement of such security.

Dated New York, May 8th, 1919.

GILBERT & GILBERT,

*Solicitors for Appellees.*

So ordered May 8, 1919

J. M. MAYER,

U. S. D. J.

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*Notice of Appeal.*

United States District Court, Southern District of New York.

In Equity. E. 14389.

WILLIAM H. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

In the Matter of the Petition of THE PEOPLE OF THE STATE OF NEW YORK, Petitioners.

The above named petitioners being aggrieved by the order dated May 3d, 1919 and entered in the office of the Clerk of this Court on the 7th day of May, 1919, which said order resettled and amended the order made and entered in the office of the Clerk of this Court on the 12th day of April, 1919, in this cause, do hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from so much of said order which provides that the claims of the People of the State of New York for \$977.86 and \$22,517.86, respectively, for license fees for the privilege of exercising corporate franchise and carrying on business within the State of New York, be allowed only as general claims against the estate of the defendant company in the hands of the receiver thereof and which disallows preference in payment of said claims, for the reasons specified in the assignment of errors which is filed herewith; and the petitioner prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

New York, May 8th, 1919.

CHARLES D. NEWTON,

*Attorney General of the State of New York,  
Solicitor for Petitioners.*

Office and Post Office Address, Capitol, Albany, New York.

*Allowance of Appeal.*

The foregoing claim of appeal is hereby allowed.  
New York, May 8, 1919.

J. M. MAYER,

*United States District Court Judge.*

*Assignment of Errors.*

United States District Court, Southern District of New York.

WILLIAM H. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

In the Matter of the Petition of THE PEOPLE OF THE STATE OF NEW YORK, Petitioners.

Now comes the petitioner the People of the State of New York, by Charles D. Newton, their solicitor, Attorney General of the State of New York, and says that the order of the United States District Court for the Southern District of New York, dated May 3d, 1919, duly filed and entered herein in the office of the Clerk of said Court on the 7th day of May, 1919, resettling the order of this Court duly filed and entered herein in the office of the Clerk of this Court on the 12th day of April, 1919, and adjudicating upon the claims of the People of the State of New York for taxes, is erroneous and contrary to the just rights of the petitioners in the following particulars, to wit:

First. The District Court of the United States for the Southern District of New York erred in holding that the claims of the People of the State of New York for \$977.86 and \$22,517.86, respectively, for license fees for the privilege of exercising corporate franchise and carrying on business within the State of New York, were only general claims against the estate of the defendant All Package Grocery Stores Company in the hands of the said receiver, whereas said claims should have been held and allowed as preferred claims against the estate of said defendant in the hands of said receiver, and the said receiver should have been directed and authorized to forthwith pay to the People of the State of New York the said sums of \$977.86 and \$22,517.86 in satisfaction thereof.

Second. That the decree and order of the said District Court of the United States for the Southern District of New York, as above pointed out, in not holding that said claims were preferred claims, is contrary to the law of the land and the evidence in this cause.

In order that the foregoing assignments of error may be made a part of the record, the said petitioners, the People of the State of New York, present the same to the Court and pray such disposition may be made thereof as is in accordance with the law and the statutes of the United States in such case made and provided, and that a reversal of so much of said order as is appealed from and against which

error is assigned, as hereinbefore stated, may be made and entered by the Court.

New York, May 8th, 1919.

CHARLES D. NEWTON,  
*Attorney General of the State of New York,*  
*Solicitor for the Petitioners.*

Office and Post Office Address, Capitol, Albany, New York.

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*Notice of Motion.*

United States District Court, Southern District of New York.

WILLIAM L. SWEET, JR., Plaintiff,  
against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

SIRs:

Please take notice, that on the annexed petition of Robert S. Conklin, verified November 21st, 1918, and on all proceedings heretofore had herein, the undersigned will move this Court at a term thereof, to be held in Room 235, in the Post Office Building, City and County of New York, on the 14th day of December, 1918, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order authorizing and permitting the People of the State of New York to file with the receiver herein the claims enumerated and set forth in the petition and authorizing and directing the receiver to receive and file said claims and for such other and further relief as to the Court may seem just and proper.

9  
Dated New York, December 21, 1918.  
Yours, &c.,

MERTON E. LEWIS,  
*Attorney General of the State of New York.*

Office & P. O. Address, State Capitol, Albany, N. Y.

To Gilbert & Gilbert, Esqs., Attorneys for Receiver, 43 Exchange Place, New York City.

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*Petition.*

United States District Court, Southern District of New York.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

The petition of Robert S. Conklin respectfully shows to this Court:

First. That he is a Deputy Attorney General of the State of New York and at all times hereinafter mentioned has been and still is attached to the New York City Bureau of the Attorney General and in charge of the interests of the State of New York in the above entitled action.

Second. That as deponent is informed and believes, said action is an equity action pending in this Court and that in the course of said action receivers have been appointed and H. Snowden Marshall is now the sole receiver therein and is in possession of and entitled to all property of said corporation and is conducting certain proceedings with a view towards distribution of said assets among creditors.

Third. That by an order heretofore entered herein, the time for creditors and claimants to file their claims with the receiver expired on February 28, 1918.

11 Fourth. That the People of the State of New York, as deponent has been informed and believes, have claims against said corporation as follows:

"For license fee or tax for the privilege of exercising its corporate franchises or carrying on business based on \$18,014,285, being the amount of capital stock employed in New York State Pursuant to Section 181, Chapter 60 of the Consolidated Laws of the State of New York, \$22,517.86.

For tax on franchise or business based on capital stock employed in New York State during the year ending Oct. 31, 1915 (assessment \$346,262) .....	\$259.70
For tax on franchise or business based on capital stock employed in New York State during the year ending Oct. 31, 1916 (assessment \$589,319) .....	441.99
Interest and penalty .....	141.80
Total .....	<u>\$843.58</u>

For license fee or taxes stated against corporation known as All Package Grocery Stores Company, predecessor corporation, the assets of which were taken over by the defendant herein, for the privilege of exercising its corporate franchises or carrying on business within the State of New York based on capital stock of \$782,280  
 12 employed in the State of New York, pursuant to Section 181, Chapter 60 of the Consolidated Laws as amended .....\$977.86"

That said taxes accrued and became a lien on all of the property of the defendant corporation pursuant to the provisions of the Tax Law of the State of New York prior to the appointment of the receiver herein.

Fifth. That prior to the time fixed for the filing of claims herein, the State of New York had presented a bill for the first amount specified herein, that is, \$22,517.86 and said bill was recognized as a claim and objections to the same have been filed by the receiver and the matter has now been brought on before the Special Master appointed herein, Robert L. Harrison, Esq., for a hearing.

Sixth. That heretofore and on or about September 6th, 1918, deponent presented to the receiver herein formal claims properly set forth and properly verified for the several items hereinbefore enumerated. That said claims have not been returned by said receiver, but deponent has received from the attorneys for said receiver notice in the form of a letter that since the time to file claims had expired, the claim of the People of the State of New York for the amounts of \$843.58 and \$977.86 could not be received by the receiver.

Seventh. That it is the contention of deponent that since the claims of the People of the State of New York are for taxes, no formal notice or proof of claim is necessary, but that the receiver is obliged to recognize said claims and to recognize the lien of the

13 People of the State of New York on all of the property of said corporation. That deponent does not desire, however, to be foreclosed from having said claims received, filed and recognized by any technical objection thereto and therefore asks that an order may be made herein permitting the filing of said claims as hereinbefore enumerated and directing the receiver to receive and recognize said claims the same as if they had been presented before the expiration of the time for filing claims, reserving, of course, to the receiver any right to which he may properly be entitled to file objections to said claims and to bring said objections before the Special Master for a hearing thereon.

ROBERT S. CONKLIN,  
*Deputy Attorney General,  
 Petitioner.*

14 STATE OF NEW YORK,  
City of New York,  
County of New York, ss:

Robert S. Conklin, being duly sworn, deposes and says:  
That he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof. That the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

ROBERT S. CONKLIN.

Sworn to before me this 22nd day of November, 1918.

ALFRED W. JONES,  
Commissioner of Deeds,  
City of New York.

Certificates filed New York (Clk. 57, Reg. 19020), Kings (Clk. 48a, Reg. 9015), Bronx (Clk. 6), Queens 3407 and Richmond.  
My Commission expires June 12, 1919.

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*Stipulation.*

It is hereby stipulated that the within motion may be heard before Mr. Justice Augustus Hand at his Chambers at No. 233 Broadway, Borough of Manhattan, City of New York, on the 11th day of December, 1918, at 5 o'clock P. M.

Dated Dec. 11/18.

MERTEN E. LEWIS,  
Attorney General.  
GILBERT & GILBERT,  
Attorneys for Receiver.

*Reply.*

United States District Court Southern District of New York.

In Equity. No. E-14-389.

WILLIAM L. SWEET, JR., Complainant,  
against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

Now comes H. Snowden Marshall, Receiver of the above named defendant company, and for a reply to the supplemental affidavit of Robert S. Conklin verified December 23rd, 1918, and submitted to the Court on January 24th, 1919:

The said affidavit states that the original application of the At-

16      torney General was based "on all proceedings heretofore had herein" and then Mr. Conklin refers to summary proceedings had herein. The first of these proceedings to which he directs attention is the first order limiting the time of creditors to file claims and he states that the proof of the mailing of a copy of the order "shows that no copy of the order was ever mailed to the State of New York or any representative thereof." No reference is made by him to the second order extending the time of creditors to file claims, and the inference to be drawn from his affidavit is that neither the State of New York nor any of its representatives had any notice of the proceedings. It is significant that he does not submit any affidavit from the State Comptroller or any one in the State Comptroller's office. The fact is as I am advised, that as long ago as the latter part of December, 1917, or the early part of January, 1918, the matter of the plaintiff's claim for a license fee was specifically brought to the attention of the State Comptroller and he then stated that the claim would be prosecuted by the Attorney General's office. But as appears by the Attorney General's petition herein, no move was made by the State Comptroller or the Attorney General to prosecute the claims in question until the month of September, 1918. It is quite true that the State Comptroller rendered bills to the Company for a license fee but it also appears from the Attorney General's petition that the Receiver rejected such claim and the notice of objection is broad enough to cover any objection which may be raised to the form or substance of the claim.

The affidavit of Mr. Conklin also points out that the various reports filed by the Receivers beginning with the first report made December 31st, 1917, show that the license tax due the State of New

17      York was carried on the books of the Receivers and on the accounts of the Receivers as a liability in the amount of \$22,517.86. The fact is that the reports referred to were the reports of the public accountants who simply found that the old company had posted up in its accounts payable ledger the bill of the State of New York. But in none of the reports of the Receivers is this claim admitted as a valid claim against the receivership estate.

Mr. Conklin further states that the various reports filed by the Receivers show an excess of assets over liabilities of from \$250,000 to \$500,000. Mr. Conklin fails to point out that these same reports show that liabilities in question were nearly \$200,000 and that the company never, in its entire existence, had any property which would justify any such capitalization of \$25,000,000 upon which capitalization the license fee in question is based.

Mr. Conklin also points out that the property was sold in June, 1918, for over \$210,000. That was approximately the amount of the consideration, but as against that there was approximately \$160,000 in Receivers' obligations, to say nothing of the claims of general creditors. Moreover the sale for \$210,000 included the good will and trade name of the Company in the State of New York, and as a part of the transaction the Company's right to do business in the

State of New York was surrendered and the surrender accepted by the State of New York which thereupon granted a charter to a New York corporation of the same name. The tangible assets so sold also included a great quantity of merchandise which had been purchased by the Receivers. The amount realized is a fair indication of the amount of capital employed by the defendant company in the State of New York.

Mr. Conklin states that the Receivers recognized a claim against the United States for taxes submitted in the form of a bill without any sworn statement, and that the Receivers paid the same as a preferred claim under an order of the Court entered on December 27th, 1917. The claim in question was one which was actually due the United States and it was properly paid at the time in order to prevent the accrual of a penalty for failure to pay the same.

Mr. Conklin also states that on June 4th, 1918, Judge Mayer made an order authorizing one Meyer Sukenick to file a claim *nunc pro tunc*. The fact is that Sukenick had previously commenced an action against the Company and he was allowed to prosecute the action to judgment, which he could not do before the expiration to file claims, and was subsequently allowed to file a claim for the amount of judgment. The amount in question was \$102. There is no analogy whatever between the two matters last referred to and the claim of the State of New York.

Throughout the affidavit of Mr. Conklin the license fee is referred to as a license tax. In the petition of the Attorney General for leave to file claims *nunc pro tunc*, the license fee is referred to as a license fee or tax, and the statement is therein made that "said taxes became a lien on the property of the defendant company before the appointment of the Receivers." As pointed out in the brief of Receivers' counsel, the license fee is not a tax. Moreover, under no circumstances, does the license fee become a lien on the property of a corporation until a warrant therefor is issued to the Sheriff and he makes an actual levy upon the property of the corporation. This is expressly provided for by Section 201 of the New York State Tax Law and no warrant ever having been issued against the property of the defendant corporation, it is submitted that no lien against such property in favor of the State was created notwithstanding the statements in the Attorney General's petition to the contrary.

As shown by the brief submitted by the Receivers' counsel, it is quite obvious that the following claims are not "taxes:"

License fee .....	\$22,517.86
Interest and penalty .....	141.89
License fee of predecessor corporation ..	977.86

but that they are claims in the nature of debts and that formal proofs of claim should be submitted in support thereof. The Attorney-General recognizes this fact by submitting formal proofs of claim and then moving for leave to file such claims *nunc pro tunc*, and he now asks in a supplemental affidavit that this Court make a final

disposition of the matter without referring it to the Special Master. In the opinion of the Receiver, it would be advisable to have the Court make an immediate disposition of the entire matter. The hearings on the claims referred to the Special Master have now dragged on for several months owing to the delay of the Attorney General in this matter, and justice to the creditors requires that the estate should be wound up with all possible speed. In the opinion of the Receiver, justice also requires that the State of New York, having so long delayed the prosecution of its claim, should not be permitted, so far as its claim for license fee and penalty is concerned, to come in on the same footing with creditors who parted with merchandise and money and other valuable consideration.

The Attorney General having sought the favor of a court of equity, should be willing to do equity. An equitable disposition of the matter would seem to be to allow the two claims of the State of New York for franchise tax for the years 1915 and 1916, amounting in the aggregate to the sum of \$701.69, as preferred claims and directing the Receiver to pay the same. As to the claims for license fee, it should be allowed as a general claim without preference at the sum of \$977.86; or, in the alternative, allowed at the sum of \$22,517.86 and subordinated to the claims of the general creditors. In regard to the item of \$977.86, this is the license fee based on the amount of capital employed in the State of New York by the All Package Grocery Stores Company of New Jersey, the predecessor of the defendant company and represents a maximum value of capital employed by its successor company, the defendant herein in this State.

Dated New York, January 27th, 1919.

H. SNOWDEN MARSHALL,

*Receiver.*

CITY AND COUNTY OF NEW YORK, ss.:

H. Snowden Marshall, being duly sworn, does hereby make solemn oath that he is the Receiver mentioned in the foregoing answer; that the statements therein contained are true to the best of his knowledge, information and belief.

H. SNOWDEN MARSHALL.

Sworn to before me this 28th day of January, 1919.

[SEAL.]

MAX ROCKMORE,  
*Notary Public, Kings Co.*

Certificate filed New York County.

12 H. SNOWDEN MARSHALL VS. PEOPLE OF NEW YORK.

21 *Stipulation.*

United States District Court, Southern District of New York.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

It is hereby stipulated and agreed by and between the attorneys for the petitioner and the attorneys for the receiver that this affidavit may be submitted on the pending motion herein as part of the motion papers.

Dated December 23rd, 1918.

MERTON E. LEWIS,

*Attorney General, State of New York,*

*Attorney for Petitioner.*

— — —

*Attorneys for Receiver.*

22 *Supplemental Affidavit of Petitioner on Behalf of the State of New York.*

United States District Court, Southern District of New York.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

STATE OF NEW YORK,

*City of New York,*

*County of New York, ss:*

Robert S. Conklin, being duly sworn, says: That he is a Deputy Attorney-General attached to the New York City Bureau of the Attorney-General of the State of New York. That he has verified the petition herein on which there is pending an application of the State of New York to file certain claims for taxes with the receiver herein. That it was stated in the notice of motion herein that said application was also based "on all proceedings heretofore had herein." That in order to call to the attention of the Court on this motion certain of the proceedings that have direct relation to the question now presented, deponent submits this further affidavit.

That this action was begun about December 1st, 1917, and the receiver herein was appointed by an order made and filed about December 4th, 1917. That on or about December 10th, 1917, an order was made and filed herein requiring all creditors and claimants to file written and verified claims on or before Jan-

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uary 15th, 1918. That said order directed the publication of the same and that a copy thereof be mailed to all creditors and claimants whose names appeared on the books of the corporation. That by an order made and filed on or about February 13th, 1918, the time in which to file the said claims was extended to February 28th, 1918. That the proof of the mailing of a copy of the order to creditors as directed by the Court filed with the receiver's report No. 3 on February 5th, 1918, shows that no copy of the order was ever mailed to the State of New York or to any representative thereof. That the various reports filed by the receiver beginning with the first report made December 31st, 1917, show that the license tax due to the State of New York was carried both on the books of the company and in the accounts of the receiver as a liability in the sum of \$22,517.86. That the preferred capital stock of this corporation amounts to \$5,000,000 and the common stock to \$20,000,000. That the tax of the State of New York was based on the proportionate amount of the capital stock employed within the State of New York. That the complainant herein, William L. Sweet, Jr., also appears to be the chief creditor as he made a loan to this Company of about \$100,000 and received as security therefor preferred stock of the par value of \$3,000,000.

That the various reports filed by the receiver herein showed an excess of assets over liabilities of from \$250,000 to \$500,000. That the sale of the property of the corporation, as shown by the receiver's report filed June 18th, 1918, was for over \$210,000. That the receiver herein recognized a claim of the United States for a tax on the capital stock, although the same was submitted as was the claim of the State of New York in the form of a bill without any sworn statement relative thereto. That the receiver applied to the Court for an order authorizing the payment of this amount as a preferred claim and secured an order made and filed December 27th, 1917, granting the relief asked for.

That on or about June 4th, 1918, an order was made by Mr. Justice Mayer of this Court authorizing one Meyer Shuckeneck, who had not theretofore filed his claim, to file said claim nunc pro tunc as of February 28th, 1918.

In addition to the relief asked for in the petition, deponent asks that the court, if it decides that no sworn proof of claim need be filed herein, direct the receivers to pay the claims of the State of New York out of the funds now in their possession as preferred claims.

ROBERT S. CONKLIN.

Sworn to before me this 23rd day of December, 1918.

ABRAHAM J. LIPSHITZ,

*Commissioner of Deeds, City of New York.*

Certificate filed in County Clerk's Office of New York No. 243, Bronx No. 31, Queens No. 3552, Kings No. 136 and Richmond.

Cert. filed in Reg. Off. of New York Co. No. 12895, Bronx Co. No. 9029, and Kings Co. No. 5084.

My Commission expires November 20, 1919.

*Order Resettling Order.*

United States District Court, Southern District of New York.

In Equity. E-14-389.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

An application having been made to resettle and amend the order of this Court dated and entered April 12, 1919,

Now, upon reading and filing the affidavit of Robert P. Beyer, Deputy Attorney General of the State of New York, verified April 30, 1919, the notice of motion herein dated April 30, 1919, and due proof of the service of said affidavit and notice of motion upon the attorneys for the receiver herein, all in support of said application and after hearing Robert P. Beyer, Deputy Attorney General of the State of New York, in support of said application, there being no opposition thereto, it is

Ordered, that the order of this Court dated the 12th day of April, 1919, and duly entered in the office of the Clerk thereof on said 12th day of April, 1919, be and the same hereby is resettled and amended so as to read as follows:

United States District Court, Southern District of New York.

In Equity. E-14-389.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

A motion having heretofore been made herein on behalf of the People of the State of New York for leave to file with H. Snowden Marshall, as Receiver of the above named defendant, certain claims for license fees and franchise taxes and said motion having been duly brought on to be heard before me and argument having been had thereon and Robert S. Conklin, Esq., Deputy Attorney-General of the State of New York, appearing in support thereof, and Francis Gilbert, Esq., of counsel for the Receiver, and Stetson, Jennings & Russell, solicitors for the complainant, appearing in opposition thereto.

Now on the petition of Robert S. Conklin, verified November 22d, 1918, and the notice of motion dated November 21st, 1918, and on the stipulation that the motion may be heard before Judge Augustus N. Hand, dated December 17th, 1918, and on proof of service of said

papers on the attorneys for the Receiver and on the affidavit of Robert S. Conklin, sworn to December 23rd, 1918, and on the reply of H. Snowden Marshall dated January 27, 1919, and on motion, it is

27 Ordered that H. Snowden Marshall, as Receiver of the defendant be and he hereby is authorized and directed to receive and file the claims and proof of claims of the People of the State of New York the same as if they had been presented before the expiration of the time for filing claims as follows:

A claim against the above named defendant for taxes on franchise or business based on capital employed in the State of New York during the year ending October 31st, 1916, amounting to \$441.99.

A tax on franchise or business based on the amount of capital stock employed in the State of New York by the All Package Grocery Stores Company, a New Jersey corporation, and the predecessor to defendant, during the year ending October 31st, 1915, amounting to \$259.70.

Interest and penalty on above a % franchise taxes amounting to \$141.89.

For license fees or tax heretofore stated against the All Package Grocery Stores Company, a New Jersey corporation, the predecessor of defendant, for the privilege of exercising its corporate franchises and carrying on business within the State of New York based on the amount of capital stock employed in New York State \$977.86.

For license fee or tax heretofore stated against the defendant for the privilege of exercising its corporate franchises or carrying on business within the State of New York, \$22,517.86; and it is

Further ordered that the said claims of the People of the State of New York for the sums of \$259.70 for tax on franchises for the year ending October 31st, 1915, and \$441.99 for tax on franchises for the year ending October 31st, 1916, and for \$141.89 interest and penalty,

28 amounting in the aggregate to the sum of \$843.58 be and the same hereby are allowed as preferred claims against the estate of the defendant in the hands of the said Receiver and the said Receiver is hereby authorized and directed forthwith to pay to the People of the State of New York the said sum of \$843.38 in satisfaction of its said claims, and it is

Further ordered that the said claims of the People of the State of New York for \$977.86 and \$22,517.86, respectively, for license fees for the privilege of exercising corporate franchise and carrying on business within the State of New York be allowed as general claims against the estate of the defendant company in the hands of said Receiver.

Dated May 3, 1919.

AUGUSTUS N. HAND,  
United States District Court Judge.

United States District Court, Southern District of New York.

#445.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

Merton E. Lewis, Attorney General of the State of New York (Robert S. Conklin, Deputy Attorney General, of Counsel), for People of the State of New York.

Gilbert & Gilbert, for H. Snowden Marshall, Receiver.

AUGUSTUS N. HAND, *District Judge:*

This is an application by the State of New York for leave to file and prove claims for taxes. On December 18th, 1917, an order was made requiring all creditors to file verified claims on or before January 15, 1918, and directing the publication of the order and the mailing of a copy to all creditors whose names appeared on the books of the corporation. The order was published but was not mailed to any State official. I do not have any reason to believe that the State had any actual notice of the order though its officials had some communication with the receivers as to the payment of the taxes. I

see no justification under these circumstances in requiring  
30 the State to make any terms as a condition of proving its claim for taxes. I, therefore, grant the application. As for the extent to which the claim will be allowed, it is the law of the courts of the State of New York that a tax or any other indebtedness to that State is entitled to payment prior to all claims not based upon a specific lien.

Central Trust Co. vs. Third Ave. Ry. Co., 186 Fed., 291.

Wise vs. Wise Co., 153 N. Y., 507.

Matter of Carnegie Trust Co., 206 N. Y., 390.

This is not, I think, a law of property, but a rule of administration or procedure in the Courts of New York as well as of England and many of our states based upon the power of the Court of a sovereign to administer in the interest of the latter assets over which it has control. If the State has a statute imposing a lien for the tax or even directing prior payment that will control as does the bankruptcy and other statutes in the case of the United States Guarantee Title & Trust Co. vs. Title Guaranty & Surety Co., 224 U. S., 152. But in the absence of a statute, I can see no reason why a United States Court should grant any priority to a State over other creditors in administering a fund which it has seized and is administering in a suit by a creditor where jurisdiction is based on diverse citizenship.

It is much the same as though a New York Court was passing on the claim to priority of payment from assets in its custody of a tax due the State of California. That State would I apprehend in the absence of a lien be treated as a general creditor. Of course a different rule obtains in bankruptcy when the act gives priority to taxes.

31 Where under the State law the claim of the State is not construed as a tax, the bankruptcy Courts grant no priority because of the fact that the debt is to a sovereign.

In re Ott, 95 Fed., 274.

In re Wyoming Valley Ice Co., 145 Fed., 267.

Commonwealth vs. York Silk Mfg. Co., 192 Fed., 81.

Judge Ward held in the case of Robinson vs. Mutual Reserve Life Ins. Co., 175 Fed., 624, that the State was entitled to no preference in the payment of taxes where a lien had not attached. It is true that he cited as authority for this the case of Wise vs. Wise Co., 153 N. Y., 507, and that in the latter case the question involved was whether the tax, which had not become a lien, should be paid prior to a mortgage. It was held in the case of Cook County National Bank vs. United States, 107 U. S., 445, that the United States was not entitled to priority against an insolvent National Bank. The last case seems to indicate that the right to priority is not a necessary attribute of national sovereignty but depends upon procedure of the particular Court administering the fund.

There are four items of taxes involved in this application. The defendant corporation was the successor to the assets and liabilities of a New Jersey corporation capitalized at \$1,000,000. That New Jersey corporation became indebted to the State of New York for a "license fee" of \$997.86, imposed for the right to come into the State to do business, and the further annual franchise tax for the year 1915 of \$259.70. The defendant corporation organized under the laws of Delaware with a capital stock of \$25,000,000. The

32 State of New York has a claim against this corporation for a license fee amounting to \$22,517.86, and for an annual franchise tax for the year 1916 of \$441.99. On the two franchise taxes there is accrued interest with a penalty amounting to \$141.89. Sec. 197 of the Tax Law of the State of New York provides that the annual franchise tax imposed by Sec. 182 of the same law shall "be a lien upon and bind all the real and personal property of the corporation." This statute renders the annual franchise tax of the New Jersey corporation, the assets of which passed to the defendant Delaware corporation, and the annual franchise tax of the latter, plainly a lien upon the property in the custody of the Court and covers the interest and penalty as well. The Receiver should therefore pay to the State of New York, in satisfaction of its lien, the sums of  $\$259.70 + \$441.99 + \$141.89 = \$843.58$ . The license fees of \$997.86 and \$22,517.86 may be proved as general claims. The receiver has argued that such claims are not for taxes, but in no case supports this contention. In the case of New Jersey vs. Anderson, 203 U. S., 483, while the

annual franchise tax, and not the organization tax, was involved in the discussion, the New Jersey Statute termed it a "license fee or tax," and the Supreme Court said:

"We think then that as denominated in Statute (Bankruptcy Law, Sec. 64-A) this was a tax (the annual license fee fixed by the State for the privilege of doing business within the State) imposed by the State upon the corporation for the privilege of existence and the continued right to exercise its franchise."

A fee for a license to begin business and one for a license to continue to do business permit of no substantial differentiation except that the tax law of New York imposes a lien in the case of  
33 the latter and not of the former. Each is a tax, but when no lien is imposed I see no reason for granting priority in this Court.

The petition is granted to the extent above indicated.

Settle order on notice.

April 4, 1919.

A. N. H., D. J.

34

*Stipulation.*

United States District Court, Southern District of New York.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

In the Matter of the Petition of the PEOPLE OF THE STATE OF NEW YORK, Petitioners.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of said District Court in the above-entitled matter as agreed on by the parties.

Dated May 31, 1919.

CHARLES D. NEWTON,

*Attorney-General of the State of New York,*

*Solicitor for Appellee.*

GILBERT & GILBERT,

*Solicitors for Respondent.*

35

*Certificate of Clerk.*

United States District Court, Southern District of New York.

WILLIAM L. SWEET, JR., Plaintiff,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

In the Matter of the Petition of the PEOPLE OF THE STATE OF NEW YORK, Petitioners.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 4 day of June, in the year of our Lord one thousand nine hundred and nineteen and of the Independence of the said United States the one hundred and forty-three.

[SEAL.]

ALEX. GILCHRIST, JR.

*Clerk.*

36

United States Circuit Court of Appeals, for the Second Circuit, October Term, 1919.

Argued November 11, 1919. Decided December 12, 1919.

No. 63.

WILLIAM L. SWEET, JR., Plaintiff,

vs.

ALL PACKAGE GROCERY STORES COMPANY, Defendant; PEOPLE OF THE STATE OF NEW YORK, Appellant.

Appeal from the District Court of the United States for the Southern  
District of New York.

Before Ward, Rogers and Hough, Circuit Judges.

Gilbert & Gilbert, for Appellee.

A. S. Gilbert and Francis Gilbert, of Counsel.

Charles D. Newton, Attorney General, for The People.

Robert P. Beyer, of Counsel.

WARD, Circuit Judge:

The State of New York has presented in this equity receiver-  
ship claims against the All Package Grocery Stores Com-  
pany, a corporation of the State of New Jersey, as follows:

"For license fee or tax state against All Package Grocery Stores  
Company, a New Jersey Corporation, the predecessor of defendant,  
for the privilege of exercising its corporate franchises and carry-  
ing on business within the State of New York, based on the amount  
of capital stock employed in New York State. \$977,86.

For license fee or tax heretofore stated against the defendant for  
the privilege of exercising its corporate franchise and carrying on  
business within the State of New York. \$22,517.86.

Sec. 181 of the Tax Law of the State of New York was amended  
by Ch. 490 L. 1917, entitled, "An Act to amend the tax law in  
relation to the license tax on foreign corporations, the material pro-  
visions being:

"Sec. 181. License Tax on Foreign Corporations. Every for-  
eign corporation, except banking corporations, fire marine, casualty  
and life insurance companies, co-operative fraternal insurance com-  
panies, and building and loan associations, doing business in this  
State, shall pay to the state treasurer, for the use of the state, a  
license fee of one-eighth of one per centum for the privilege of ex-  
ercising its corporate franchises or carrying on its business in such  
corporate or organized capacity in this state, to be computed upon  
the basis of the capital stock employed by it within this state, dur-  
ing the first year of carrying on its business in this state; which  
first payment shall not be less than ten dollars; \* \* \* The  
amount of capital upon which such license fees shall be paid shall  
be fixed by the state tax commission, which shall have the same  
authority to examine the books and records in this state of such  
foreign corporations, and the employees thereof as it has in  
the case of domestic corporations and the comptroller shall  
have the same power to issue his warrant for the collection  
of such license fees, as he now has with regard to domestic cor-  
porations."

The remedy which the Comptroller had to collect taxes from  
domestic corporations was provided by Sec. 201, the relevant part of  
which is as follows:

"Sec. 201. \* \* \* the comptroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against which such account is stated, found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the state treasurer the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof."

It is contended that this license fee is not a tax but a conventional agreement between the state and foreign corporations whereby they contract to pay a fee in consideration of the privilege of doing business in the State. But we think it quite clear that the license fee is a tax. It is provided for in the state tax law, described as a license tax in the title of the amending act, called a license tax in the description of Sec. 181 and is fixed by the State Tax Commission.

The Court of Appeals of New York in *Wise vs. Wise Co.*, 153 N. Y. 597, referring among other cases to two earlier decisions of *In re Columbian Ins. Co.* 3 Ald. Dec. 239, and *Central Trust Co. vs. N. Y. C. & N. R. R. Co.*, 110 N. Y. 250, said:

"The contention of the learned counsel for the receiver of taxes rests upon a somewhat novel proposition. It is that from the most ancient times the courts of England have recognized the right of the sovereign, representing the state, to priority of payment over all other claims, though they may have been secured by specific liens; that the people of this state have succeeded to all the prerogatives of the British crown as parts of the common law suitable and applicable to our condition. \* \* \* The general doctrines contained in these cases would seem, upon a superficial view, to go far in support of the contention upon which this appeal is based, although it should be observed that a very important fact present in this case was absent in the cases cited, and that was the existence of a specific lien at law upon the personal property acquired by a levy under valid legal process in the hands of the sheriff.

On a closer examination, however, it will be found that they do not sustain the broad principle contended for. They undoubtedly go far enough to sustain the principle that, when a fund is in the hands of the court or the trustee of an insolvent person, or corporation, a claim due to the government upon a debt or for taxes is entitled to a preference in certain cases or under certain circumstances. \* \* \*

In this country the right of the government to be preferred in the distribution of such a fund exists, under the authorities, in two cases: (1) Where the preference is expressly given by statute as was the case in *U. S. vs. State Bank of North Carolina*, *supra*. (6 Pet. 29, 34). (2) Where, before the fund has come to the hands of the receiver or

trustee, a warrant or some other legal process has been issued  
40 for the collection of the tax or debt, and the fund has come to  
his hands impressed with a lien in favor of the government in  
consequence of the proceedings for collection, as was the case in the  
Columbian Ins. Co. Receivership, 3 Abb. Dec. 239."

In *Robinson v. Mutual Reserve Co.*, 175 Fed. Rep. 624, affirmed 189 Fed. Rep. 347, we held that the State was not entitled to any preference over general creditors on its claim for taxes when the statutory lien did not arise until after receivers had been appointed and no warrant or other legal process for collection had been issued before their appointment. This was in strict accordance with the test laid down in *Wise vs. Wise*, supra, as to the State's right of preference. In *Central Trust Co. vs. Third Avenue R. R. Co.*, 186 Fed. Rep. 293, though a lien was given for taxes which came into effect before the appointment of the receivers, we construed the statute as not giving the lien any preference over prior debts specifically secured by lien. Subsequently the Appellate Division of the First Department in *Matter of Carnegie Trust Co.*, 151 App. Div. 606, affirmed 206 N. Y. 290, decided that the State as sovereign is entitled to priority of payment for taxes and any other debts, whether such priority is given by statute or not, over unsecured creditors, just as the Crown was at common law.

In this case the District Judge held that this priority as confirmed by the highest court of New York was a matter of procedure only. We think it was a matter of substantive right, being a part of the common law adopted by the State Constitution of 1777 as the law of the State of New York. Following this decision, therefore, we now hold that the State's claim for license tax, though not given a lien by statute (except from the time of the actual levy of a warrant for collection issued by the Comptroller) is entitled to priority of payment over general creditors.

It is further contended that the prerogative of the State of  
41 New York does not exist as against a corporation of the State  
of New Jersey, with which the State of New York is not in  
the relation sovereign. But the State is a sovereign as to all persons  
and things within its own boundaries and as to the property of the  
defendant corporation in the hands of the receivers here the prerogative clearly exists.

Decree reversed.

42 United States Circuit Court of Appeals, for the Second Circuit,  
October Term, 1919.

Argued November 11, 1919. Decided December 12, 1919.

No. 63.

WILLIAM L. SWEET, JR., Plaintiff,

v.

ALL PACKAGE GROCERY STORES COMPANY, Defendant; PEOPLE OF  
THE STATE OF NEW YORK, Appellant.

Appeal from the District Court of the United States for the Southern  
District of New York.

Before Ward, Rogers and Hough, Circuit Judges.

HOUGH, C. J. (dissenting):

The majority decision does not enforce a specific lien securing either a tax or any other demand; it does recognize a right in the State of New York to preference and priority in the payment of debts over other creditors—by virtue of its sovereignty.

Sovereignty over what? Certainly not over the insolvent corporation, which is of another State, and not over this Court (as I  
43 suppose), but over the corporate property because it is physically situated in New York. In other words, when, as here, the State has no lien affecting its debtor's res, its sovereignty is brought forward to operate in rem.

The doctrine, when not imposed by a modern statute, is a trifle archaic—yet perhaps well enough in a court of New York, which is subject in personam (so to speak) to the same sovereignty. But, so far as New York is concerned, the property of the All Package Company might just as well be in the custody of a court of California—or of Canada, as where it is.

Goods in custodia the District Court of the United States cannot be reached by any process of the State in which that Court is sitting; legally they are as remote as if in foreign parts, and the physical situation could only affect legal rights, if the legal custodian were bound by foreign law; in this instance, the law of New York. In matters such as this, it is not so bound by either comity, statute or constitutional obligation. The majority judgment can only rest on a belief that the court is affected by the sovereignty aforesaid. This I deny, and therefore dissent.

- 44 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms in the Post Office Building in the City of New York, on the 22nd Day of December, One Thousand Nine Hundred and Nineteen.

Present: Hon. Henry G. Ward, Hon. Henry Wade Rogers, Hon. Charles M. Hough, Circuit Judges.

WILLIAM L. SWEET, JR., Plaintiff,

v.

ALL PACKAGE GROCERY STORES COMPANY, Defendant; PEOPLE OF THE STATE OF NEW YORK, Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is reversed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.

H. W. R.

- 45      Endorsed: United States Circuit Court of Appeals, Second Circuit. W. L. Sweet v. All Package Co. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Dec. 22, 1919. William Parkin, Clerk.

- 46      United States Circuit Court of Appeals.

WILLIAM L. SWEET, JR., Complainant,

against

ALL PACKAGE GROCERY STORES COMPANY, Defendant.

In the Matter of the Petition of the PEOPLE OF THE STATE OF NEW York, Petitioners-Appellants; H. Snowden Marshall, as Receiver, Appellee.

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

The petition of H. Snowden Marshall, as Receiver, respectfully shows that he is the appellee above named; that the above-entitled matter came on to be heard before this Court upon the petition of the

People of the State of New York, and on December 22, 1919, the Court handed down its decision reversing the order of the District Court.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Jan. 20, 1920. William Parkin, Clerk.

47      Petitioner now prays that a reargument of the matter may be had upon the ground that there was not called to the Court's attention, and the Court did not consider, the opinion of the United States Supreme Court in the case of *City of Richmond vs. Bird et al.*, reported in 249 United States Reports, at page 174, which opinion was not published at the time the brief for this petitioner was written and did not come to the attention of petitioner's counsel until after this Court rendered its decision on December 22, 1919, as above stated.

Your petitioner is advised, and is of the opinion, that the decision in *City of Richmond vs. Bird* is controlling upon the question in the instant case, and if it had been cited on petitioner's brief or called to the Court's attention on the argument this Court would have been justified in affirming the order of the District Court under review.

Your petitioner will ever pray, etc.

H. SNOWDEN MARSHALL,

*Receiver, All Package Grocery Stores Company.*

GILBERT & GILBERT,

*Solicitors for Appellee.*

I hereby certify that in my opinion the foregoing petition is well founded in point of law and fact and ought to be granted.

FRANCIS GILBERT,

*Counsel for Appellee.*

48      *Memorandum in re Petition for Reargument.*

This Court decided this case upon the theory that the State of New York was entitled to a preference in payment of its claim for license fee upon the ground of its sovereign power. It is submitted that under the authority of *City of Richmond vs. Bird* no such right exists. The United States Supreme Court there cited with approval the decision in *Jackson Coal Company vs. Phillips Line* (114 Va., 40), wherein the facts being quite analogous to those here, the Court held that the State, not having exercised its right to levy upon the property prior to the appointment of a Receiver, was in no better position than that of a general creditor. Under the New York Tax Law the license fee does not become a lien unless a warrant has been issued by the State Comptroller. No warrant was issued and no lien attached before the receivership. Not having acquired a lien, the State relied upon the claim of sovereignty. Under the doctrine enunciated as above stated, the State of New York, having failed to

exercise its right to acquire a lien, stands in no better position than a general creditor.

Respectfully submitted,

GILBERT & GILBERT.  
*Solicitors for Appellee.*

FRANCIS GILBERT,  
*Of Counsel.*

49 At a Stated Term of the United States Circuit Court of Appeals for the Second Circuit, Held at the Court Rooms, Post Office Building, City of New York, on the 10th Day of February, 1920.

Present: Hon. Henry G. Ward, Hon. Henry Wade Rogers, Hon. Charles M. Hough, Circuit Judges.

WILLIAM L. SWEET, JR., Plaintiff,

v.

ALL PACKAGE GROCERY STORES COMPANY, Defendant; PEOPLE OF THE STATE OF NEW YORK, Appellant.

A petition for a rehearing having been filed herein by counsel for the Appellee;

Upon consideration thereof it is

Ordered that said petition be and hereby is denied.

H. G. W.

H. W. R.

50 UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 49 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of William L. Sweet, Jr., against All Package Grocery Stores Company, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 13th day of February in the year of our Lord One Thousand Nine Hundred and Twenty and of the Independence of the said United States the One Hundred and Forty-Fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,  
*Clerk.*

51 UNITED STATES OF AMERICA, *vs.*

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The People of the State of New York is appellant, and H. Snowden Marshall, Receiver of All Package Grocery Stores Company, is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

52 Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fourth day of May, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,

*Clerk of the Supreme Court of the United States.*

[Endorsed:] File No. 27,591. Supreme Court of the United States, No. 836, October Term, 1919. H. Snowden Marshall, as Receiver, etc., vs. The People of the State of New York. Writ of Certiorari.

[Stamped:] United States Circuit Court of Appeals. Second Circuit. Filed May 13, 1920. William Parkin, Clerk.

53 In the Supreme Court of the United States, October Term, 1919.

No. 836.

H. SNOWDEN MARSHALL, as Receiver, etc.,

v.

THE PEOPLE OF THE STATE OF NEW YORK.

*Stipulation as to Return of Writ of Certiorari.*

It is hereby stipulated, by counsel for the parties to the above entitled cause, that the certified copy of the transcript of the record on file in the Supreme Court of the United — shall constitute the

return of the Clerk of the Circuit Court of Appeals for the Second Circuit to the writ of Certiorari issued herein.

A. J. GILBERT,

*Counsel for Petitioner.*

CORTLANDT A. JOHNSON,

*Counsel for Respondent.*

May —, 1920.

54 To the Honorable the Supreme Court of the United States,  
Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereunto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, May 13, 1920.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,

*Clerk of the United States Circuit Court  
of Appeals for the Second Circuit.*

55 [Endorsed:] File No. 27,591. Supreme Court U. S. October Term, 1919. Term No. 836. H. Snowden Marshall, as Receiver, etc., Petitioner, vs. The People of the State of New York. Writ of certiorari and return. Filed June 1, 1920.